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HARRIS COUNTY, 1822-1845

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III. LOCAL ADMINISTRATION

With the election of General Houston and Mirabeau Lamar as President and Vice President of the Republic, the terms of Burnet and Zavala drew to a close. The new Congress, which, together with the President and Vice President, had been elected on the first Monday in September, assembled on the third day of October in the town of Columbia, Brazoria County. Zavala resigned his office October 21st, and Burnet sent in his last official communication on the next day. On assuming the duties of his office Lamar paid a noble, eloquent tribute to his predecessor, commending his public and private virtues. Zavala had died at his home on Buffalo Bayou November 15, 1836.¹

The Constitution, under whose provisions the first Congress assembled, had been adopted at Washington on the Brazos on the 17th day of March. Certain of its articles provided for the division of the Republic into convenient counties, and the establishment in each county of a county court and such "justices' courts" as Congress should from time to time determine. So, with the passing of the provisional government, which now took place, new laws were made for the establishment and government of these counties. The first act passed relating to the County of Harrisburg provided that "the seat of justice be, and the same is hereby established at the town of Houston." This act was approved December 22, 1836, and a section of the same act decreed "that the Island of Galveston shall for the future be included within the limits of the County of Harrisburg and be and compose a part of said County."

The time for "holding court" in Harrisburg County was fixed by the first Congress, on the fourth Monday of January, April, and October. It consisted of a chief justice, elected by joint ballot of both houses of Congress for a period of four years, and two associate justices selected by a majority of the justices of the peace from among their own body, and said justices so selected were

¹Brown, *History of Texas*, II, 108-109.

required to attend said county court, or pay a fine, to be assessed by the chief justice, not exceeding one hundred dollars. The law required that there should be elected by qualified voters, from each militia captain's district, two justices of the peace for their respective districts, "who shall be commissioned by the president and hold office for two years."²

The name "Harrisburg County" remained in use until it was changed to "Harris" by a joint resolution of Congress, approved by Mirabeau B. Lamar, December 28, 1839.

The creation of the County of Galveston on May 15, 1838, relieved the chief justice of Harrisburg County of one responsibility previously attaching to his office, which had required that a justice of the peace and a constable should be maintained on the island and elections be held there.

Andrew Briscoe, the first chief justice of Harris County, was a Mississippian, who had studied law in the office of General John A. Quitman at Jackson, Mississippi. He was admitted to practice in the courts of that state. He did not follow the profession of law for any length of time, however, but lived on his plantation. He was registered as a citizen of the State of Coahuila and Texas, district of Ayish in 1833, and made several trips back and forth between Mississippi and Texas on horseback before engaging in any business. He was about twenty-five years old when finally, early in 1835, he landed a stock of goods and opened a store at Anahuac. The details of his experience with the Mexican authorities at this place are given in letters, which have been made a part of this history, and in copies of publications made at the time in a newspaper at Columbia.

The irregularity, unavoidably attendant upon the organization of the government of the Republic of Texas, also pervaded that of Harris County, thus casting great responsibility upon the first chief justice. He was obliged to assume authority not yet clearly defined by law. Three letters addressed by him to Hon. Thomas J. Rusk, which show his position in the premises, are on file at Austin.

The previous course of Andrew Briscoe in doing his part as a soldier toward gaining independence, as a member of the Convention at Washington, toward forming a government, all gave assurance of his faithful discharge of any duty intrusted to him.

²Gammel, *Laws of Texas*, I, 216-224.

At San Antonio, where he, with his company of Liberty Volunteers, had taken part in the minor engagements about that place, he had later volunteered to "follow old Ben Milam into San Antonio." Then, when the people of the municipality of Harrisburg had elected him to join his colleague, De Zavala, and represent them at Washington, he rode across the country to that place. The deliberations of the Convention having come to an end, he was immediately commissioned into military service again. At the battle of San Jacinto he was captain of Company A, Infantry Regulars, under command of Colonel Henry Millard. He had been tried and found true, and the newly organized government commissioned him to continue in the service, but in a new rôle, as chief justice of the County of Harrisburg.

There was much embarrassment in organizing the new county. The appointment of the chief justice of Harrisburg County was made on December 20, 1836, yet twenty days elapsed without his receiving any official notification of his appointment, and he was impelled to write on January 9, 1837, to Rusk, then secretary of state, reporting the fact that all the information he had obtained with regard to carrying out the duties of the office he was expected to fill, had been through the newspapers, and "a hand bill with the printed name of Wm. S. Fisher appended, requiring the chief justice immediately to organize the militia according to law, but addressed to no one."

Seeing the great necessity for the immediate organization of the militia, he was resolved to take the oath of office at Harrisburg and carry out this important duty, but to perform no other official functions until instructions had been received from the department of state.

Another letter to the same authority dated January 11, 1837, says: "I had received no official intelligence that I had been appointed to the office, but suppose that such neglect was caused by the late illness of General Austin. I have taken the 'responsibility' of dividing my county into captain's beats, and have issued officially orders for militia election. If I have done wrong it will produce no bad results."

He further speaks of the county being very much disorganized and entirely without magistrates, and of the fact that he had not seen the law creating county courts, nor had he taken the oath of

office on account of the absence of Robert Wilson from Harrisburg County at that time.

In the next letter dated January 30, 1837, he includes a statement of "the boundaries of Harrisburg County as nearly as they could be ascertained in the absence of the laws creating them."

He suggests that "Galveston Island having been attached to this County by a late act of Congress, throws our County into a very awkward shape, said Island being entirely unconnected with any other part of the County"; and concludes by outlining plans for certain changes in the county boundaries.

The county court of Harrisburg County, as first organized, with few exceptions, corresponds very closely with that in force at the present day. The county commissioners, justices of the peace, and chief justice of the county court constituted a board of commissioners which was invested with entire control and supervision of roads, highways, ferries, bridges, and was required to provide at the expense of the county, for the support of the indigent, blind, and lame, who were unable to support themselves.

All probate business was in charge of the chief justice of the county court. Among inventories of estates filed, were included the names of many slaves, and occasionally an application was made for guardianship for a "free girl or boy of color."

Records of the probate court show that at its first session on February 28, 1837, Richard Vince, by his attorney, T. J. Gazley, asked to be appointed administrator of the estate of Robert Vince, deceased, which was granted.

The first marriage license was granted to Hugh McCrory and Mary Smith, July 16, 1837. It was signed by D. W. Clinton Harris, County Clerk. The marriage took place July 23, 1837, Z. H. Matthews, a minister of the Methodist Church, officiating.

The minutes of the commissioners' and county court from March 9, 1837, to March 23, 1846, give the names of the following chief justices who performed the duties of this office, viz: Andrew Briscoe, H. Humphreys, B. P. Buckner, Isaac N. Moreland and A. P. Thompson. Associate justices for the same period were Joel Wheaton, Clement C. Dyer, James McGahey, John Shea, Benjamin F. Hanna, E. H. Wingfield, John Fitzgerald, George Fisher, Sol Child, James M. McGee, W. F. Weeks, C. Herman Jaeger, J. W. Fogg and Josiah T. Harrell. Clerks of the county

court were D. W. C. Harris, E. D. Wingfield (clerk pro tem. for probate court October 29, 1837), and Wm. R. Baker.

Minutes of the commissioners court for the first term show that the board of commissioners met on March 9, 1837, "pursuant to the order of Hon. A. Briscoe." The justices of the peace present were Isaac Batterson, C. C. Dyer, Joel Wheaton, John Denton, and J. S. McGahey. A. Briscoe, president of the board, presided. Two associate justices for the county and probate courts were elected by ballot. They were C. C. Dyer and Joel Wheaton. The minutes were signed by D. W. C. Harris, Clerk.

The minutes of September record the names of C. C. Dyer, J. Cooper, M. M. Battle and J. S. McGahey as having been appointed to prepare plans and receive bids for a court house and jail. At another meeting in the same month they reported, and a committee consisting of the chief justice and Sheriff John M. Moore, was appointed to receive title to the square upon which the buildings were to be placed. The committee to build the court house and jail consisted of M. M. Battle, C. C. Dyer and Isaac Batterson.

On January 18, 1838, A. Briscoe reported that the contract had been let to Maurice L. Birdsall to build the jail at \$4,750.00, and the court house for \$3800.00. At a meeting held on April 7, 1838, it was reported that some alteration had been made in the plan of the jail, making it necessary to contract for a second story to the building. This contract was also taken by Birdsall. The work was completed and the jail ready for occupancy on the 23d day of March. The contractor had been allowed till March 20, and the explanation was made by the president of the board that, "this delay is excusable on account of the uncertainty of communication between this port and New Orleans, where he had to send for his spikes and iron doors."

The commissioners were greatly harassed by the complaints of property owners in the neighborhood of court house square, who objected to the location of the jail there.³

The first commissioners court was officially called "The Board of Commissioners of Roads and Revenues."

The sheriffs were John W. Moore, Magnus T. Rodgers and John Fitzgerald.

The sheriff's duties included the collection of taxes, and he was

³Another courthouse was built in 1850 on the square.

required to open an office in different sections of the county, on stated dates. For instance, on June 5, 1839, Sheriff John W. Moore gave notice that he would attend in his office in the city of Houston on June 30, at Lynchburg on July 1, at Wm. Pierpont's store, Spring Creek, for receiving State and County taxes for 1838, inviting all tax payers to be present on these dates, and settle up, or be dealt with according to law.

The deputy sheriffs often performed the duty of collecting taxes in the county precincts. William K. Wilson was one of the deputies who performed this office for many years.

A list of precincts in the county tends to show that in 1843 the largest part of the population was in, and south of, the city of Houston. Chief Justice Algernon P. Thompson, in ordering an election for sheriff and coroner February 6, 1843, declared that polls should be opened at the following precincts, in charge of presiding officers, viz: No. 1, Court House, Jas. M. McGee, Esq.; No. 2, Kesslers' Arcade, G. H. Jaeger, Esq.; No. 3, City Hotel, F. C. Wilson, Esq.; No. 4, Niles' Coffee House, R. A. Hanks, Esq.; No. 5, Harrisburg, A. Briscoe, Esq.; No. 6, Lynchburg, at Hardin's house, M. Hardin, Sen.; No. 7, S. N. Dobie's, Middle Bayou, G. B. Reed, Esq.; No. 8, Spillman's Island, H. Levenhagen; No. 9, B. Page's, B. Page; No. 10, Penn's, San Jacinto, D. P. Penn; No. 11, R. Dunman's, Werry B. Adams; No. 12, Cypress Bayou, John W. Fogg, John Simons; No. 13, Spring Creek, G. W. Cropper, W. Beasley.

The Republic of Texas was divided into four judicial districts, and one judge was elected to each district by vote of both houses of Congress. He was required to reside, after his appointment, in one of the counties of which his district was composed. A district court was required to be held in the county of Harrisburg on the third Mondays in March and September, and might continue in session six days and no longer. As the judges were required "to alternate, so that no one judge should hold court in the same circuit for two courts in succession, unless called upon to do so by the judge whose duty it may be to hold such circuit," the minutes of the district court of Harris County show that twelve different judges presided during the period from March, 1837, to the fall of 1846.

Harrisburg (Harris) County was at first comprised in the sec-

ond judicial district, but, upon an increase in the number of districts, it became, after a few years, a part of the fourth, and subsequently upon the further increase of districts to seven, it composed a part of the first district. Every session of Congress changed the counties of the several districts, and the times for holding courts, so that there seems to have been much irregularity in the courts of this county. What with deaths, resignations, and absences of the judges, many terms of court passed without sessions being held, and little business was transacted, as shown by the minutes. Owing to the frequent changes in the laws regulating these courts, there seems to have been confusion in the minds of the lawyers as to who were qualified to preside. *The Morning Star* of December 5, 1839, comments as follows: "There is strong reason to fear that the regular term for holding a session of the District court in the county will again be permitted to pass unimproved, as there appears to be a great difficulty about a judge. It was imagined in the absence of the newly elected judge of this District, Judge Shelby would preside during the present session, but it has been decided this measure would also be illegal." Judge Benjamin C. Franklin presided over the first term, of March, 1837. Others who presided at succeeding terms were Shelby Corzine, James W. Robinson, Edward T. Branch, R. M. Williamson, H. W. Fontaine, A. B. Shelby, Richard Morris, Patrick C. Jack, M. P. Norton, R. T. Wheeler, and John B. Jones.⁴ In many instances the statement is made on the minutes, "Judge absent," "No court," and in very few cases were the minutes signed.

The District clerks for the same period from March, 1837, to the fall term of 1846 were J. S. Holman and Francis R. Lubbock.

"The District Courts having been organized by the Act of December 22, 1836, the first District Court held in the county was opened on Monday, the 20th of March, 1837. Present—Hon. Benjamin C. Franklin, Judge; John W. Moore, Sheriff; James S. Holman, Clerk. The commission of the Judge, dated December 20, 1836, and signed by Sam Houston, President, and Stephen F. Austin, Secretary of State, was read and ordered to be recorded. The following are those who answered when called by the sheriff,

⁴This list of judges was obtained from the minutes of the District Court, Eleventh Judicial District of the State of Texas, where the minutes of the District Court of Harris County of the Republic of Texas have been preserved. They are comprised in books A, B, C, D, and E.

came into court and composed the first Grand Jury, to-wit: Benjamin F. Smith, Edward Ray, Benjamin Stancil, Abraham Roberts, P. W. Rose, Wm. Goodman, M. H. Bundic, Wm. Burnett, John Goodman, sr., Freeman Wilkerson, Gilbert Brooks, Thomas Hancock, Allen Vince, John Dunman, James Earls, Elijah Henning, Andrew H. Long and Joseph House, sr. Benjamin F. Smith was appointed foreman. This grand jury held its sessions in the boughs of some large trees which had been cut down and were lying on the ground near by. On the next day, March 21, the first indictment was brought in; it was against Whitney Britton for assault and battery; also, against Joseph T. Bell for murder, and James Adams for larceny. Britton was tried on the same day and fined five dollars. Joseph T. Bell was also tried on the same day under the indictment for murder. Bell demurred to the indictment—this, we are told means to stop or delay—the court however, positively refused to be delayed right in the threshold of its proceedings; the demurrer was overruled and Bell required to answer, which he did by pleading ‘not guilty’; then came a jury, the first ever empaneled in the county, to-wit: Berry Beasly, Sam M. Harris, Arche Hodge, James Pevehouse, D. S. Harbent, Edward Dickinson, John Woodruff, Marshall McKeever, Elliot Hodge, Leeman Kelcey, John O’Bryan and Joseph A. Harris, who concluded that the prisoner had done nothing more than they would have done under similar circumstances, and returned a verdict of justifiable homicide. James Adams being also tried for larceny, we find Gov. F. R. Lubbock on the jury—the jury found the prisoner guilty of the theft and it was thereupon decreed that that said Adams restore to Lawrence Ramey \$295 and the notes mentioned in the indictment, and further that he receive thirty-nine lashes on his bare back, and be branded in the right hand with the letter T, and that the sheriff or his deputy, on Friday, March 31, execute the sentence in some public place in the city of Houston.”⁵

The custom of duelling prevailed in the Republic of Texas, as it did in many of the states at that time. But efforts were being made to discountenance it, and on December 26, 1838, we find the foreman of the grand jury and his fellow jurymen issuing a lengthy and forcible address, principally directed against the evil

⁵Burke's *Texas Almanac*, 86-87.

of duelling, and earnestly inviting the attention of Congress to the necessity for specific laws against the practice. The names of this grand jury are recorded as follows: Niles E. Smith, Foreman, W. Douglas Lee, A. C. Allen, George White, William M. Cooke, John Alex. Newland, James Seymour, John Iiams, William B. Bronaugh, L. C. Stanley, Daniel Shipman, Lorenzo de Zavala,⁶ George W. Powell, Richard Ross.

The following is a partial list of the members of the bar, and officers of the court of the Second Judicial District in 1839. It was copied from *The Morning Star*, April 16, 1839, and represents those who endorsed Augustus Tompkins for re-election to the office of district attorney, which he then held:

Moseley Baker, I. N. Moreland, John Birdsall, H. W. Fontaine, Thomas J. Gazley, H. Austin, S. L. B. Jasper, Jackson Smith, E. L. Stickney, J. H. Herndon, Wm. Ward, A. H. Phillips, John R. Reid, P. R. Lilly, Solon Miller, Jas. Love, Pat C. Jack, Chas. Cleland, Robert Page, Fenton M. Gibson, John L. Doran, A. B. Shelby, A. Wynne, R. Ross, R. Morris, J. W. Moore, Sheriff Harris Co., Jno. Fitzgerald, Coroner, E. H. Winfield, Clerk District Court, A. M. Tompkins, District Attorney.

Harris County was represented in the Congress of the Republic of Texas by the following: In the first, second and third sessions of the Senate, by Robert Wilson; fourth, fifth and sixth by Francis Moore, Jr.; seventh, eighth and ninth by William Lawrence. In the first session of the House by Jesse H. Cartwright, second by Thomas J. Gazley, third and fourth by William Lawrence, fifth by James Reilly,⁷ sixth by Archibald Wynne, seventh by Sidney Sherman, eighth and ninth by J. W. Henderson.⁸

As the finances of a county are of the utmost importance in tracing its progress, I endeavored to get an accurate record of the tax returns of Harris County, hoping to find in the assessment

⁶This was the eldest son of General Lorenzo de Zavala, who remained in Texas several years after the Revolution, and eventually removed to Yucatan.

⁷James Reilly represented the Republic of Texas at Washington, and during Buchanan's administration was appointed minister from the United States to Russia. He was killed while in command of his regiment, C. S. A., at the battle of Franklin, Louisiana, in 1862.

⁸J. W. Henderson was Lieutenant Governor when Governor Peter Hansboro Bell was elected to congress in 1853, and served as Governor during the remainder of his term of office.

rolls items that would be of interest. But, they were not accessible, having been stored in the old jail at the time the new court house was under construction. I then applied to the comptroller's office at Austin, and was told that the records sought for, were there, but upon investigation I learned that they were in a bad condition, being not only yellow from age, but that insects had ravaged among their figures, and they could only be studied and satisfactorily deciphered by the aid of a magnifying glass. Under these adverse conditions, I have been unable to do more than approximate the financial status of the county, during the nine years of its corporate existence as a part of the Republic of Texas, and have culled from the mutilated data a few items which are here presented:

In the treasury department, office of the commissioner of revenue, is the sworn statement of John W. Moore, first Sheriff of Harris County, to the effect that "the amount of nine thousand six hundred and forty two 44/100 dollars is all the taxes collected by me for the year 1837." This was sworn to and subscribed before E. L. Stickney, acting commissioner of revenue at Austin, on August 13, 1840—a fair showing for a new county in a country just emerging from revolution. A steady rise in values continued until the crest of prosperity was reached in 1841, when official returns showed the total amount of \$12,218.45 assessed. But the next year the curve of decline was so sharp as to indicate a panic, and such there really was. The two Mexican invasions of that year necessitated a call "to arms," and the able-bodied men of the county again went into the field in defense of Texas. It is not surprising to find that the list of taxable property handed in for assessment amounted to but little in excess of one-fourth of that of the previous year, to be exact, the small sum of \$3,116.40.⁹

In this assessment were included 1,039,239 acres of land valued at \$789,515, 1068 town lots at \$279,818. Among the assessed property were 287 negroes over ten years old, and 151 under that age; 1 stud horse, 373 work horses, \$300.00 at interest, 5779 head of cattle, 9 pleasure carriages, 19 wooden clocks, 3 metal clocks, 17 silver watches and 21 gold watches.

The generally disturbed condition of the whole country on ac-

⁹The report was made by W. R. Baker, Chief Clerk, Harris County, and Assessor, before A. P. Thompson, Chief Justice, on November 30, 1842.

count of actual invasion, the consequent depreciation of the currency of the Republic, and the removal of the capital from Harris County combined to create severe financial depression from which there was slow recovery. Records during the years intervening between this time and annexation, instead of showing an advance in values, indicate a downward tendency, which continued until annexation was an assured certainty.

The student of history who reviews the phases of life in this county during the Republic, finds much of interest, not in the success that attended the efforts put forth, for there was slight reward, but in the unswerving faith of those who had settled here and determined to stay, come weal or woe. In no respect was this quality of the citizenship more signally displayed than in the building up of its chief city, named in honor of Sam Houston, the commander in chief of the Texan army, the hero of San Jacinto.